

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

SEAN MILLER,
Plaintiff

v.

K. TROMETTER, et al.,
Defendants

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CIVIL NO. 4:11-cv-811

(Judge Nealon)

FILED
SCRANTON

NOV 27 2012

ORDER

Per M. E. P.
DEPUTY CLERK

NOW, this 27th day of November, 2012, for the reasons set forth in the Memorandum issued this date, **IT IS HEREBY ORDERED THAT:**

1. The motion to dismiss, (Doc. 12), is **GRANTED in part and DENIED in part:**
 - A. The motion to dismiss count one (1) is **DENIED**;
 - B. The motion to dismiss count two (2) is **GRANTED** and count two (2) is **DISMISSED with prejudice**;
 - C. The motion to dismiss count four (4) is **GRANTED in part and DENIED in part:**
 - a. The motion to dismiss the retaliation claim against Defendant Trometter for spreading rumors that Plaintiff was a rat and a snitch is **DENIED**;
 - b. The motion to dismiss the retaliation claim against Defendant Trometter for issuing a false misconduct charge is **GRANTED** and this allegation is **DISMISSED with prejudice**;
 - c. The motion to dismiss Defendant Damiter from count four (4) is **DENIED**;
 - D. Count five (5) is **DISMISSED without prejudice**;
 - E. Count six (6) is **DISMISSED with prejudice**;
 - F. Plaintiff's claims regarding the body cavity searches are **DISMISSED with prejudice** under the Fourth and Fourteenth Amendments, and **DISMISSED without prejudice** under the Eighth Amendment;

- G. Plaintiff's request for monetary damages against Defendants in their official capacities is **DISMISSED with prejudice**;
2. Plaintiff is directed to file a second amended complaint within thirty (30) days of the date of this Order; and
3. Any appeal will be deemed frivolous, lacking merit, and not taken in good faith.


United States District Judge